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June 17, 2015

VIA HAND DELIVERY

Mr. Peter Doyle
Chief, Audio Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Operational Status of Station WLNO(AM), New Orleans, LA (F.I.N. 58393)

Dear Mr. Doyle:

On behalf of WLNO Trust (Stephan C. Sloan, Trustee) ("Sloan" or "Trustee"), we are writing in response to your May 12, 2015 letter ("Letter") regarding the operational status of Station WLNO(AM), New Orleans, LA (F.I.N. 58393) ("Station").¹ In your letter, you state that Commission records indicate that the Station was silent as of June 2, 2014, and that the Station license would automatically expire as a matter of law if broadcast operations did not resume by 12:01 a.m., June 3, 2015. As the letter notes, the Station resumed operation in March of this year in accordance with the technical parameters ("STA Parameters") outlined pursuant to a previously submitted request for special temporary authorization (BESTA 20140306AHY) ("Engineering STA"). You question whether this operation can provide the basis for a resumption of operations that would meet the requirement that the station not be silent for more than a year.

For the reasons set forth below, Sloane believes that the Station's return to air was sufficient to avoid expiration of the Station license under Section 312(g) of the Communications Act of 1934, as amended ("Act").² To the extent that the Commission does not recognize this period of operation as sufficient to avoid Section 312(g) expiration, Sloan asks the Commission to reinstate or extend the license in order to "promote equity and fairness," as WLNO is a struggling AM station that is attempting to emerge from a very messy and complicated

¹ On June 10, 2015, Victoria McCauley of the FCC's Audio Division granted Trustee a one-week extension by which to respond to the Letter. Thus, this response is timely filed.

² 47 U.S.C. § 312(g).

bankruptcy, and Sloan, as a Trustee, has recently found a buyer that is willing to invest in the Station and restore it to its fully licensed facilities. WLNO is an historic station that has provided service to the New Orleans community since the 1950s – being the city’s first Top 40 station for decades, and then evolving in the 1970s to one of the original album oriented rock stations in the country.³ This trailblazing station cannot be allowed to die, simply because of a paperwork snafu during the course of the resolution of a bankruptcy proceeding.

Background. WLNO is located in New Orleans, an area plagued by hurricanes and tropical storms. In 2012, the Station was hit hard by Hurricane Isaac, severely damaging the transmitter building and destroying all of the equipment within it. While the prior licensee, Communicom Co. of Louisiana, L.P. (“Communicom”) undertook efforts to restore the Station to full power, it ultimately only installed two low power transmitters that were capable of operating at up to 5,000 watts. In March of 2014, it sought and was granted continued authority to operate at such a variance from its license (at the STA Parameters).⁴ Just a few months later, however, on June 5, 2014, Communicom filed a silent STA request with the Commission, stating that the Station was in bankruptcy and being put up for sale at auction, and that the Station would remain silent until the sale to a new owner was completed.⁵ At that point, no further efforts were made to restore the Station to its fully licensed facilities.

On October 20, 2014, Communicom filed an application seeking the FCC’s permission to assign the Station to Sloan as a Trustee.⁶ That application was granted on December 12, 2014, and the parties closed on the transaction on January 9, 2015. Since that time, Sloan has worked diligently for the ultimate benefit of the bank that was the Station’s principal creditor to find a suitable permanent buyer for the Station, and in fact has recently signed an agreement to sell the Station. As the attached documentation demonstrates,⁷ the Station resumed operations on March 18, 2015 pursuant to its STA Parameters, and operated for about a week before going silent again.⁸ Sloan operated the Station for this brief period for several reasons. First, the buyer wanted to confirm that the transmission equipment was in working order. Second, because the bank that foreclosed on the property was selling the real property, all of the equipment needed to be removed (and in fact, has now been removed). Returning the Station to the air for this brief period was intended to “re-set” the clock under Section 312(g) in order to give the buyer the maximum time to locate a new site, get the necessary FCC approvals for the purchase and relocation of the Station, and bring the Station back on the air.

³³ See, <http://en.wikipedia.org/wiki/WLNO> (last visited June 10, 2015).

⁴ See FCC File No. BESTA- 20140306AHY (granted March 31, 2015; expired Oct. 1, 2014).

⁵ See FCC File No. BLSTA-20140605ABY (granted July 31, 2014; expired Jan. 28, 2015).

⁶ See FCC File No. BAL-20141020AAZ (granted Dec. 12, 2014; consummated Jan. 9, 2015).

⁷ See Attachment A (invoices from Jay Whitehurst, the Station’s consulting engineer, for work done on the Station in March and April 2015); Attachment B (a check made payable to Jay Whitehurst dated April 17, 2015); Attachment C (Declaration of Stephan Sloane); Attachment D (Declaration of Daniel Miller), and Attachment E (Declaration of Donald Pugh).

⁸ See FCC File. No. BLSTA - 20150416AAK.

This resumption of authority was pursuant to the STA Parameters authorized by the Engineering STA issued by the Commission after the restoration of service following the damage to the Station by the hurricane. The Engineering STA covering these parameters was inadvertently allowed to expire in the confusion of the transition of the operations of the Station through the bankruptcy process to the current Trustee. The Trustee is merely holding the Station for the purposes of effectuating a sale, with the proceeds to benefit the bank that was the principal creditor of the prior licensee. The Trustee resumed operations with the facilities that were last authorized by the Commission before the Station was thrown into bankruptcy – the only technical facilities that then existed for the Station. Not being fully familiar with the regulatory history of the Station’s operations, and not comprehending the importance of the fact that the existing technical facilities were ones that were only authorized by the Engineering STA and not the Station’s full licensed facilities, the Trustee failed to note that the Engineering STA had expired. This was an inadvertent oversight caused by the transient nature of the current ownership. This paperwork error should not be allowed to terminate the operations of this historic facility, to the detriment of the innocent creditors who will receive the proceeds from the ultimate sale of the Station.

Moreover, the operation was from the Station’s licensed site, but was at less than full power. Section 73.1560(d) authorizes a station to operate from its licensed site at a lower power for a period of less than 30 days without prior FCC approval. Here, the operation was for less than 10 days, so even notice to the FCC was not required. Thus, even though the Engineering STA was not renewed, Section 73.1560(d) of the rules would appear to authorize the operations conducted here.⁹

Discussion. WLNO’s return to air in March 2015 is sufficient to avoid license expiration under Section 312(g) of the Act, as the Station’s operating parameters had been previously approved by the Commission pursuant to the Engineering STA. While Sloan admits that it should have filed an STA extension request, this oversight was but a paperwork oversight. This was not a situation where a Station was operating at a location or with facilities that had never been authorized by the FCC. Instead, it was operating with the technical facilities that were authorized by the Engineering STA, and at which the Station was last operating before it was taken silent during the bankruptcy. In the renewal context, the Commission has routinely issued forfeitures to licensees for continuing operations without a valid license, in some cases for many years.¹⁰ In those cases, the Commission has never taken the position that the Station license should be forfeited under Section 312(g) because it was operating from a location for which the authorization had expired. Taking a similar approach, where the licensee resumed operations

⁹ The Station operated at daytime power reduced from 50.0kw to 5.0kw with the licensed daytime pattern and operated at the licensed nighttime power with the licensed nighttime pattern, using one of the towers from its licensed seven-tower array.

¹⁰ See e.g., *Hope Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16370 (MB 2011) (issuing a proposed forfeiture for licensee’s failure to timely file a renewal application and for operating with an expired license for more than seven years).

from previously authorized parameters (though under an expired authorization, as in the case of the late-filed renewals), would therefore be consistent with well-established Commission precedent.¹¹

Moreover, even if the Commission rejects this argument and considers the Station license as expired under Section 312(g) of the Act, discretion to reinstate or extend the license is warranted in this case. Section 312(g) provides, “. . . the Commission may extend or reinstate such station license . . . for any reason to promote equity and fairness.”¹² As discussed above, WLNO is an AM station whose facilities were destroyed by a hurricane. The former licensee made some repairs, but fell into bankruptcy before operations could be fully restored. Given these unfortunate circumstances (an AM station, a hurricane, and a bankruptcy), it is hard to imagine more compelling facts that would justify extension of the license period. There is no question that the Station did in fact resume operations in March for approximately a week. And there is no dispute that such operations were resumed from a location and with facilities that had been authorized by the FCC (even if such authorization had expired). The inadvertent failure to extend the STA should not lead to the draconian result that might otherwise result here.

The circumstances are made even more compelling in light of the nearly impossible timeframe by which Sloane and any successor licensee would otherwise have had to operate under without the reset of the 312(g) “clock.” Sloane would have had a mere five months to: (1) identify a buyer, (2) file for and get FCC approval to assign the Station, and (3) close the deal. Then, the new licensee would have had to (1) identify a new site (as the tower equipment was removed from the current site so that the bank foreclosing on the real property could sell it for development for a housing tract), (2) file for and get FCC approval to move to the new site, and (3) build out the new site and resume operations. Accomplishing all of this in a 5-month time frame would have been a Herculean undertaking for any licensee, let alone a trustee of a bankrupt AM station in hurricane country. Moreover, the cancellation of the license here will only injure the innocent creditor of the former licensee who stands to recover some of its losses from the sale of the Station. Thus, exercising the discretion to reinstate or extend the license would be both fair and equitable here, as it will allow Sloane and the buyer to complete these tasks within a more manageable timeframe, and preserve this historic station and the service it

¹¹ Sloan recognizes that in most of the cases involving late-filed license renewals, the FCC has issued forfeitures for operating without proper authorization or for the late-filing of required FCC applications. While a fine might be appropriate here were the circumstances different, this is the situation of a Trustee who is holding the station license until a sale to a permanent owner can be found. A forfeiture here will only injure the innocent creditor, the bank that will benefit from the ultimate sale of the Station. As the Station has not been receiving any revenue while silent, and has been incurring costs in the payments of the Trustee and the Trustee’s expenses, even without any further financial data it is clear that any forfeiture would only injure the ultimate beneficiary of the sale, the bank that was the creditor of the bankrupt company. Full financial information for the operation of the trust can be provided to the FCC if necessary.

¹² 47 U.S.C. § 312(g).

provides to the New Orleans community.¹³

Conclusion. For the forgoing reasons, the Commission should accept the attached documentation as evidence of the Station's resumption of operations and give Sloane the amount of time needed to sell the Station and allow a new licensee adequate time to relocate the Station and resume operations.

Sincerely,



Kelly A. Donohue
Counsel to WLNO Trust (Stephan C.
Sloan, Trustee)

cc: Victoria McCauley (via email)

¹³ The Commission has exercised discretion in cases involving more egregious behavior. *See e.g., John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541 (MB 2009). There, on June 5, 2008, the station went silent due to severe storms that caused damage to the station equipment, particularly its tower, which collapsed. On June 4, 2009, the licensee notified the Bureau that the station had resumed operation on March 19, 2009, with a replacement tower at a different electrical height from its licensed tower. The STA was granted on July 22, 2009. Thus, the licensee in that case operated without authority for four months. While the Commission noted that the license was subject to expiration pursuant to Section 312(g), it instead issued a forfeiture to the licensee for the period of unauthorized operations.

ATTACHMENT A

105 N. Gatehouse Drive; Apt K
Metairie, LA 70001
601-297-7154

To
Stephan Sloan
Media Services Group
402 Angell Street
Providence, RI 02906

Thank you!!

Email: jay@whitehurst-family.com

ATTACHMENT B

STEPHAN SLOAN

57-79222115

1006

Date

April 17, 2015

Pay

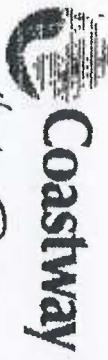
TO THE ORDER OF

Stephan Sloan
Wife of Sloan and Sons

\$ 1,000.00

/100 Dollars

SECURITY MARKING
DIVISION



MEMO

Wife of Sloan

Stephan Sloan

MP

Q118PRTV

Regions Bank >

Regions Bank >

FOR THE STATE OF TEXAS, COUNTY OF DALLAS

Stephan Sloan
For Signature Only

ATTACHMENT C

DECLARATION OF STEPHAN C. SLOAN

I, Stephan C. Sloan, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

- I am the Trustee for WLNO Trust, current licensee for station WLNO(AM), New Orleans, LA.
- At my direction, Consulting Engineer Daniel Miller and the station's former Operations Director Jay Whitehurst turned on the WLNO transmitter on March 18, 2015, and the station resumed broadcast operations from March 18 through March 25, 2015. During this time, Mr. Whitehurst emailed me regular status reports and provided photographs of the station. See Exhibit A. Mr. Whitehurst also provided me with a video clip of the station broadcasting from his car radio on March 18, 2015. See Exhibit B. The clip itself can be viewed and heard at <https://www.youtube.com/watch?v=kLFKwhpNo4Y&feature=youtu.be>. The station broadcast a mix of instrumental, Christian, and gospel music, and played 24 hours a day during this time period.
- Eternal Media has entered into an agreement with the WLNO Trust (Stephan C. Sloan, Trustee) to purchase the station upon filing for and receiving the approval of the Federal Communications Commission.

Signed and dated this 10th day of June, 2015.


Stephan C. Sloan

EXHIBIT A

Services

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:14 PM
To: Donohue, Kelly
Subject: FW: WLNO Studio Office 3/21 Inspection
Attachments: IMG_20150321_153321.jpg; IMG_20150321_153401.jpg; IMG_20150321_153231.jpg

> Date: Sun, 22 Mar 2015 21:53:57 -0500
> Subject: WLNO Studio Office 3/21 Inspection
> From: jay@whitehurst-family.com
> To: stephansloan@msn.com
> CC: jay@whitehurst-family.com
>
> Stephan: yesterday afternoon I checked on the WLNO studio office and ran a few more automation logs so something would be on the air thru when Danny could shut it off. Attached are some pictures.
>
> -Jay
>
> ~~ this email was sent from my phone, please excuse any typos ~~







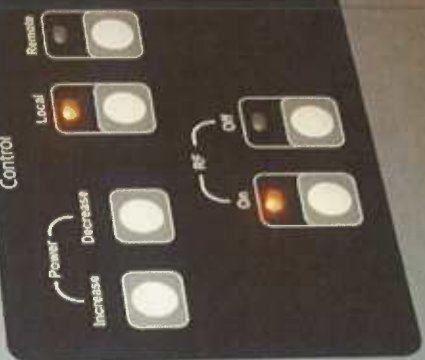
Services

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:14 PM
To: Donohue, Kelly
Subject: FW: WLNO Transmitter 3/21 Inspection
Attachments: IMG_20150321_165416.jpg; IMG_20150321_165242.jpg

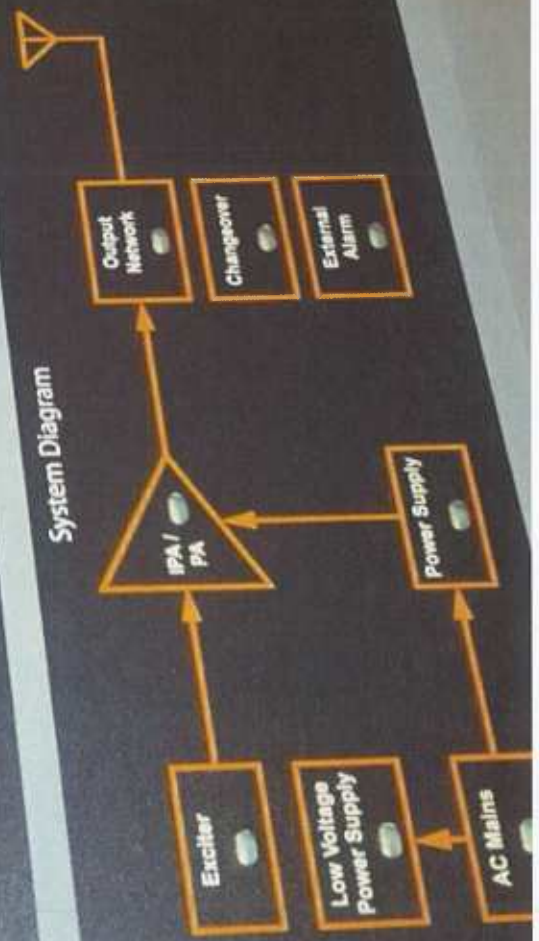
> Date: Sun, 22 Mar 2015 21:51:46 -0500
> Subject: WLNO Transmitter 3/21 Inspection
> From: jay@whitehurst-family.com
> To: stephansloan@msn.com
> CC: jay@whitehurst-family.com
>
> Stephan: yesterday afternoon I checked on the WLNO transmitted site. Nothing new to report. Attached are pictures.
>
> -Jay
>
> ~~ this email was sent from my phone, please excuse any typos ~~



Diagnostic Display



System Diagram





Services

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:13 PM
To: Donohue, Kelly
Subject: FW: WLNO - Arthur Tower 3 Cutting
Attachments: IMG950163.jpg; IMG950164.jpg; IMG950167.jpg

From: jay@whitehurst-family.com
To: stephansloan@msn.com
CC: jay@whitehurst-family.com
Subject: WLNO - Arthur Tower 3 Cutting
Date: Wed, 18 Mar 2015 18:37:09 -0500

Stephan:

Art was able to cut the growth within Tower 3 fence yesterday evening. Attached are pictures showing the finished work.

I should be receiving the official invoice from Art any day. I will scan it to you as soon as I receive.

-Jay Whitehurst







Services

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:13 PM
To: Donohue, Kelly
Subject: FW: WLNO Studio Office 3/18 Inspection
Attachments: IMG_20150318_123322.jpg; IMG_20150318_123424.jpg; IMG_20150318_123433.jpg; IMG_20150318_123546.jpg; IMG_20150318_123628.jpg; IMG_20150318_123640.jpg

From: jay@whitehurst-family.com
To: stephansloan@msn.com
CC: jay@whitehurst-family.com
Subject: WLNO Studio Office 3/18 Inspection
Date: Wed, 18 Mar 2015 18:29:01 -0500

Stephan:

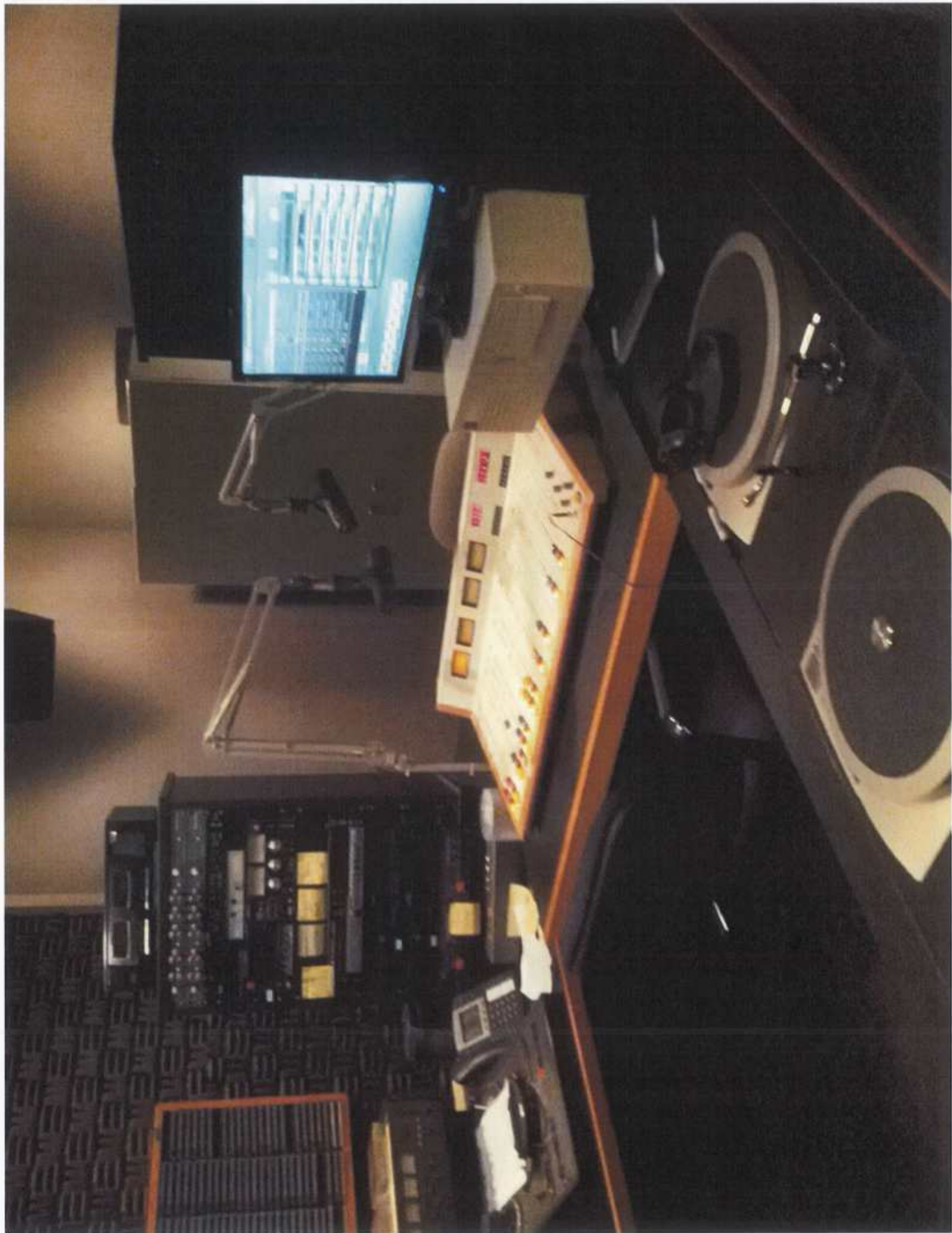
I checked on the WLNO Studio Office today as I mentioned I would. Attached are pictures including showing the automation system running.

-Jay Whitehurst













Services

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:12 PM
To: Donohue, Kelly
Subject: FW: WLNO Transmitter 3/18/15 Inspection
Attachments: IMG_20150318_125916.jpg; IMG_20150318_130235.jpg; IMG_20150318_131357.jpg

From: jay@whitehurst-family.com
To: stephansloan@msn.com
CC: jay@whitehurst-family.com
Subject: WLNO Transmitter 3/18/15 Inspection
Date: Wed, 18 Mar 2015 18:26:02 -0500

Stephan:

I met Danny at the site this afternoon (that's his Jeep). From my part, everything is fine there. Attached are pictures including the transmitter at 5,000 watts.

-Jay Whitehurst





EXHIBIT B

Donohue, Kelly

From: Stephan Sloan <stephansloan@msn.com>
Sent: Wednesday, June 10, 2015 12:11 PM
To: Donohue, Kelly
Subject: FW: WLNO Radio Audio 3/18/15
Attachments: VID_20150318_140939.mp4

From: jay@whitehurst-family.com
To: stephansloan@msn.com
Subject: WLNO Radio Audio 3/18/15
Date: Wed, 18 Mar 2015 18:23:24 -0500

Stephan:

Attached is a short video clip from my car radio of WLNO audio on-air at 2:10pm.

-Jay Whitehurst

ATTACHMENT D

DECLARATION OF DANIEL MILLER

I, Daniel Miller, Consulting Engineer for WLNO Trust (Stephan C. Sloan, Trustee), hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

- On March 18, 2015, I turned on the transmitter for WLNO(AM), New Orleans, LA, and the station resumed broadcasting pursuant to the technical parameters outlined in BESTA-20140306AHY (an extension of previously authorized BSTA-20120912AAO). It operated at reduced daytime power, at 5,000 watts instead of its authorized 50,000 watts.
- The station broadcast in a nondirectional pattern from its licensed site, and on one of the seven towers that is part of its licensed tower array (Tower #3).
- The station was on the air from March 18th through March 25th. I visited the station several times over the course of the week to ensure that the equipment was working properly. I turned the transmitter off on March 25, 2015.

Signed and dated this 10th day of June, 2015.



Daniel Miller

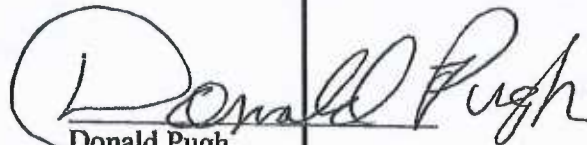
ATTACHMENT E

DECLARATION OF DONALD PUGH

I, Donald Pugh, CEO of Eternity Media Group, LLC ("Eternity Media"), hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

- As a prospective buyer of station WLNO(AM), New Orleans, LA, I visited the station's main studio and tower site on March 19th and March 20, 2015, to ensure that all of the equipment was working properly and that the station was broadcasting. I was accompanied by one of the station's consulting engineers, Jay Whitehurst.
- The station was broadcasting a mix of instrumental music, Christian and gospel music on the dates I visited, and I also confirmed that the station could be heard in New Orleans.
- Eternity Media has entered into an agreement with the station's current licensee, WLNO Trust (Stephan C. Sloan, Trustee) to purchase the station upon filing for and receiving the approval of the Federal Communications Commission.

Signed and dated this 10th day of June, 2015.


Donald Pugh